

## ***5 Official Opinions of the Compliance Board 22 (2006)***

### **OPEN SESSION REQUIREMENT – PUBLIC BODY MAY NOT LIMIT VIDEOTAPING TO NEWS MEDIA**

March 29, 2006

*Ms. Deborah Belcher*

The Open Meetings Compliance Board has considered your complaint that the Judiciary Committee of the Maryland House of Delegates violated the Open Meetings Act by prohibiting you from videotaping the Committee's proceedings at a meeting on February 2, 2006. For the reasons stated below, the Compliance Board concludes that the Act was violated.

#### **I**

#### **Complaint and Response**

The events in question occurred during a Judiciary Committee meeting on Thursday, February 2, 2006.<sup>1</sup> The complaint described the sequence of events as follows:

I was recording the proceedings with my personal video camera when a State Police officer asked me to come outside. He informed me that if I was not "Press" then I could not video tape the proceedings. He was not going to let me back in unless I left my camera outside. When I told him and another officer that I had nowhere to leave it and assured him that I would abide by his request they let me return. I did not realize that I was not allowed to video tape as there were many TV cameras in the room and the only sign in reference to this was inside the room and not visible as there were people sitting and standing in front of this sign.

In a timely response on behalf of the Judiciary Committee, Assistant Attorney General Bonnie A. Kirkland contended that the Act was not violated. The response

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<sup>1</sup> The complaint indicated a date of "February 3," but we believe that the correct date is February 2.

provided more details about the February 2 events, based on Ms. Kirkland's interviews with the Administrative Assistant to the Committee Chairman and three law enforcement officers, including the two officers involved in the encounter with the complainant, Corporal Gary Carpenter and Trooper First Class Samuel Irby.

The Committee's activities that day included a vote on House Bill 48, a very controversial proposed constitutional amendment having to do with entitlement to marry. The Committee room was crowded, and the meeting was covered by a number of television crews. With regard to the use of video equipment, the Committee's staff had posted the following sign above the table where bill sign-up sheets are located: "ALL REPORTERS AND FILM CREW MUST GET PERMISSION FROM ADMINISTRATION [*sic*] ASSISTANT PRIOR TO COMMITTEE HEARINGS AND BRIEFINGS BEFORE FILMING AND TAPING."

During the meeting, according to the response, a legislative aide approached TFC Irby "and expressed concern that an individual was attempting to videotape the proceedings and was hiding the camera each time the Trooper looked her way. Because of the crowd and the controversial nature of the bill before the Committee, the person expressed to TFC Irby concern about the woman's behavior." At around the same time, a member of the Committee reported to the Administrative Assistant "that an individual complained to her that the woman sitting next to him was attempting to videotape the proceeding in a disruptive manner." The interaction that then ensued was summarized this way in the response:

TFC Irby asked Ms. Belcher to step outside the Committee room. He and Cpl. Carpenter asked her if she had a video camera. She said she did. They then asked her if she was with the media and she responded that she was not. Finally, they asked her if she had received permission to record the committee's proceedings and she responded that she had not. They then explained that permission to use such equipment is required prior to the proceedings and asked her if she could leave the camera in another location during the proceedings. She explained that her car was parked some distance away and there was no other place for her to leave her video camera. They then explained that if she agreed to turn the video camera off, she could take it back inside the Committee room for the remainder of the proceedings. She agreed and returned to the Committee room.

The response argued that the Committee’s “prior permission” rule is not, and was not alleged in the complaint to be, the kind of flat prohibition of videotaping that the Compliance Board has held that would violate the Act. Rather, the response argued, because the rule requiring permission is a reasonable one and was not followed by the complainant, there was no violation.

## **II**

### **Analysis**

#### **A. Videotaping Policy Generally**

Among the duties of a public body is to “adopt and enforce reasonable rules regarding the conduct of persons attending its meetings and the videotaping, televising, photographing, broadcasting, or recording of its meetings.” §10-507(b).<sup>2</sup> In construing this language in light of the statement of legislative policy at the beginning of the Act, we have held that a public body may not prohibit videotaping at an open meeting, because a prohibition is not a “reasonable rule.” 3 *OMCB Opinions* 356 (2003); 1 *OMCB Opinions* 137 (1995). In the 1995 opinion, we wrote that a rule on the use of video recording equipment is “reasonable” if the rule “(1) is needed to protect the legitimate rights of others at the meeting; and (2) does so by means that are consistent with the goals of the Act.” 1 *OMCB Opinions* at 140.

Apart from the issue of videotaping, we have also held that the public body must afford members of the public and reporters access to an open meeting on equal terms. 2 *OMCB Opinions* 67 (1999). This equality principle applies to videotaping. Neither the Judiciary Committee nor any other public body may have a rule that permits television crews to videotape a meeting while prohibiting members of the public from doing so.

#### **B. The Judiciary Committee’s Procedures**

We agree with the Committee’s response that, given conditions in the meeting room, especially when a controversial bill is heard or voted upon, it may have a procedure requiring those who desire to use video recording equipment to check in with the Administrative Assistant in advance. This enables the Administrative Assistant to inform the videographer of the rules governing the individual’s behavior during the meeting – for example, that flash equipment is not to be used and that videotaping is to be done from particular locations. The Administrative Assistant may require the individual’s affirmative assent to these

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<sup>2</sup> Unless otherwise noted, all statutory references are to the Open Meetings Act, Title 10, Subtitle 5 of the State Government Article, Annotated Code of Maryland.

behavioral rules as a condition for allowing the videotaping.<sup>3</sup> This is a reasonable process to forestall disruption of a meeting. Moreover, we take it from the response that the rule is intended to be applied uniformly, whether the would-be videographer is an credentialed member of the news media or not. Responding to the allegation that the complainant “was informed that only Press was allowed to tape the proceedings,” the response stated that “the Committee does not have such a rule.”<sup>4</sup>

We have considerable difficulty, however, in reconciling this reasonable model with the way in which the Committee’s procedures are applied in practice. First, the law enforcement officers who enforce the rule apparently have an understanding of it that impermissibly differentiates between journalists and other citizens. In addition to the allegation in the complaint (an officer “informed me that if I was not ‘Press’ then I could not videotape the proceedings”), a news account in the *Annapolis Capital* of February 8, 2006, included the following: “State Police said they generally don’t allow anybody to videotape who isn’t a member of the media, because they don’t want taping to be used for commercial purposes or in campaigns.” Later in the story, the reporter attributed to the commander of the State Police legislative security detachment the comment that, “the standing policy is to prohibit videotaping by anyone who is not a member of the media, and it has happened several times in the past.” If this were the policy, it would violate the Act. An individual may not be barred from videotaping an open meeting because of concern over the later use of the tape or because the individual is not a journalist. The apparent misunderstanding by State Police officers about the actual policy needs to be rectified.<sup>5</sup>

Second, we see problems with the way in which the Judiciary Committee’s rule is communicated to the public. An aspect of “reasonableness” is that a public body give people fair notice of the requirements governing videotaping. Here, the means of communication is the posted sign. But this is troublesomely worded. It addressees “reporters and film crew,” journalistic terms which convey the impression that the rule about prior permission applies only to them.

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<sup>3</sup> This, presumably, is the “permission” referred to in the sign. If someone agreed to abide by the behavioral rules but was nevertheless denied permission, the action would be unreasonable.

<sup>4</sup> The response’s assertion is supported by the following in a news account in the *Annapolis Capital* of February 8, 2006: “Del. Joseph Vallario, D-Prince George’s, chairman of the Judiciary Committee, said last night that he doesn’t mind people videotaping as long as they request permission in advance.”

<sup>5</sup> We recommend that the Judiciary Committee and other committees assure that the assigned State Police officers are aware of the actual policies governing audio or video recording of committee proceedings.

To convey the essence of the rule more accurately, we suggest that the sign posted in the Committee hearing room be revised to read as follows: “ANYONE WISHING TO FILM OR TAPE THIS COMMITTEE MEETING MUST SEE THE ADMINISTRATIVE ASSISTANT BEFORE DOING SO.” We also suggest that this requirement and the Committee’s more specific behavioral rules (as to permitted locations for taping, the use of light equipment, and the like) be specified in writing and made available on the Legislative website, not by posted sign alone.

***C. The Police Intervention on February 2***

There is no dispute that the complainant was prevented from continuing to videotape the meeting on February 2. Why?

According to the complaint and the newspaper story, it is because only journalists may do so. If this was the reason, the Act was violated. The response, summarizing the conversation between the two law enforcement officers and the complainant, acknowledged that they asked if she was with the news media. It is hard to understand the purpose of this question unless the officers thought that the answer was pertinent. Even if the Committee’s rule is not intended to distinguish impermissibly between journalists and others, what matters most is how the rule is actually administered.

The Committee’s response answers the “Why?” question differently. The police intervened because the complainant had violated a reasonable rule by failing to get permission for her activity, as required by the posted sign. The complaint suggested that the sign indicating this requirement was not visible because of standees. In our view, however, even if the sign had been visible, its message was sufficiently ambiguous and confusing so that the complainant’s failure to seek permission was not a proper basis to prevent her from videotaping the proceedings in a nondisruptive way.<sup>6</sup>

**III**

**Conclusion**

In light of the deficient communication of the Judiciary Committee’s rule and the apparent misunderstanding of it by the law enforcement officers charged with enforcing it, we find no proper basis for the Committee to have prevented the

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<sup>6</sup> The response made passing reference to an unidentified person’s concern that the videotaping was disruptive. In the absence of any supporting detail, however, we give no weight to this suggestion.

complainant from continuing to videotape the meeting on February 2, 2006. The Act was violated.

OPEN MEETINGS COMPLIANCE BOARD

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